

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.516/2018.

(D.B.)

- 1) Smt. Vidya Hemantrao Lonare,
Aged about 33 years,
Occ.Service, Staff Nurse,
R/o Rural Hospital, Maregaon,
Tq. Margaon, Distt. Yavatmal.
- 2) Smt. Sunita Tukaram Padale,
Aged about 34 years,
Occ.Service, Staff Nurse,
R/o Rural Hospital, Anjangaon Surji,
Tq. Anjangaon Surji, Distt. Amravati.
- 3) Smt. Prayag Punjaji Potphade,
Aged about 39 years,
Occ.Service, Staff Nurse,
R/o Rural Hospital, Ghatanji,
Tq.Ghatanji, Distt. Yavatmal.
- 4) Smt. Vidya Mahadeo Kamble,
Aged about 32 years,
Occ.Service, Staff Nurse,
R/o Sub-Division Hospital,
Pandharkawada, Distt. Yavatmal.
- 5) Smt. Nita Dayaram Kove,
Aged about 37 years,
Occ.Service, Staff Nurse,
R/o Rural Hospital, Maregaon,
Tq. Margaon, Distt. Yavatmal.
- 6) Smt. Jaya Ramchandra Bhutkar,
Aged about 31 years,
Occ.Service, Staff Nurse,
R/o Malegaon, Dist. Solapur.

Applicants.

-Versus-

1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-400 032.

2) Director,
Public Health Department,
Arogya Bhavan, St. Georges Hospital Compound,
Fort, Mumbai.

Respondents

Mrs. S.P. Giratkar , the learned counsel for the applicants.
Shri P.N. Warjekar, the learned P.O. for the respondents.

Coram:-Shri Shree Bhagwan, Vice-Chairman
and
Shri A.D. Karanjkar, Member (J)

Judgment is reserved on 17th July 2019.

Judgment is pronounced on 26th July 2019.

JUDGMENT

Per: Member (J)

(Passed on this 26th day of July 2019)

1. Heard Mrs. S.P. Giratkar, the Ld. counsel for the applicants and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. All the applicants are appointed by the Deputy Director of Health Services, Akola as Bonded Nurse. It is contention of the applicants that, though they have completed considerable

service, but their request for regularization is not considered by the respondents. In O.A. No. 900/2016, order was passed by M.A.T., Mumbai on 9.12.2016 and directions were issued to regularize the services of bonded candidates on completion of two years service. It is submitted that in W.P. No. 2046/2010, directions were issued by the Hon'ble High Court. It is submitted that, though the applicants were in continuous service for a period more than 10 years, but their services are not regularized, therefore, action of the respondents is illegal and the respondents be directed to regularize the services of the applicants by issuing directions to the respondents. It is submitted that the services of the applicants be regularized with effect from the date of their initial appointment. The second request of the applicants is that direction be given to the respondents that the respondents shall not insist the applicants to appear and pass the departmental examination.

3. Application is opposed by the respondent Nos. 1 and 2 mainly on the ground that vide notification dated 15.4.2015, the Govt. of Maharashtra framed the rules and rules came into force as the Staff Nurse, Maharashtra Nursing Service, Group-C (Recruitment) Rules, 2015. It is submitted that in Rule 13, it is specifically mentioned that the Staff Nurses appointed till 31st

December 2011 shall have to pass the special written examination conducted by Maharashtra Knowledge Corporation Limited or any other authorized Institute as decided by the Government for their regularization in the service . It is submitted that the applicants have not passed this examination.

4. Second submission of the respondents is that, the applicants are appointed in service after the judgment in case of Uma Devi and in the matters, on which reliance is placed by the applicants i.e. in O.A.No.900/2016 and W.P. No. 2046/2010, all the Nurses were appointed before the judgment delivered in case of Uma Devi. It is submitted that as the specific rules for recruitment of Staff Nurses are framed by the Govt. of Maharashtra, therefore, it is mandatory for the applicants to pass the departmental examination as provided in Rule 13. It is submitted that there is no substance in the application and, therefore, it is liable to be dismissed.

5. We have gone through the judgment delivered by the Hon'ble High Court in W.P. No. 2046/2010. After reading the same, it seems that the Hon'ble High Court has considered the ratio in case **of Secretary, State of Karnataka and others V/s Uma Devi and others.** It must be kept in mind that when writ petition was

decided, the rules for recruitment were not framed by the Govt. and secondly all the petitioners in W.P. No. 2046/2010 were engaged in service, prior to the judgment in case of **Secretary, State of Karnataka and others V/s Uma Devi and others** (supra).

6. In para No.35 of the judgment, the Hon'ble High Court has observed that, though the petitioners were not selected through MPSC, but it was undisputed that the petitioners were selected after procedure for selection was followed and they were selected by duly constituted Selection Committee constituted by the Govt. of Maharashtra. It is also observed that the advertisement was published and thereafter recruitment process was conducted and the petitioners were selected. In para 16, the Hon'ble High Court has observed that, the Govt. of Maharashtra has issued Resolution dated 2.8.2003 by which Selection Committee was constituted for selection of candidates and it was not disputed by the respondents that the petitioners were initially appointed for a fixed term and later on they were continued in service. It was also not disputed that the new rules were made available vide Resolution dated 18.2.2006 to the employees. The most important factor is that when the decision was delivered by the Hon'ble High Court, Recruitment Rules were not framed by the Government and they were not in force. Similarly,

when the matter was decided by this Tribunal, reliance was placed on the judgment in W.P. No. 2046/2010. We have also perused the order of regularization which is at Annexure-F. All the Nurses whose services were regularized by that order, were appointed in service from 19.12.1996 till 13.8.2004. Similarly, order Exh.G discloses that all the candidates whose services were regularized, were appointed till 20.6.2005. It is specific contention of the respondents that, all the applicants are appointed as Bonded Staff Nurse after 25.8.2005 and, therefore, as per Circular dated 25.8.2005 issued by G.A.D., as the applicants were appointed after the judgment delivered in case of Uma Devi, (dated 24.7.2004) therefore, they are not entitled for any relief in this matter.

7. Once it is accepted that the Recruitment Rules are framed by the Govt. and rules came into force on 15.4.2015, in view of Rule 13, applicants were bound to pass the written examination conducted by Maharashtra Knowledge Corporation Limited or by any other authorized Institution. It is submitted that in Rule 13, concession was given to Staff Nurse appointed till 31st December 2011 to pass the examination for their regularization. It seems that the applicant did not avail that opportunity and pass the examination, but it is their contention that directions be issued to the respondents

that they should not insist that the applicants shall pass the departmental examination. In our opinion, so long as Rule 13 is in force, this Bench cannot grant any relief to the applicants.

8. Here, we would like to point out that the applicants are not challenging the legality of Rule 13, therefore, unless and until this rule is struck off, no such relief can be granted to the applicants. In view of this discussion, we are compelled to say that there is no merit in the application. Hence, the following order:-

ORDER

- (i) The O.A. stands dismissed.
- (ii) No order as to costs.

(A.D. Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

Dt. 26th July 2019.
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I affirm that the contents of the PDF file Order are word to word same as per original judgment.

Name of Steno : Girhale, Personal Assistant.

Court Name : Court of Hon'ble VC and Member (J)

Judgment signed and pronounced on date : 26th July 2019.

Uploaded on date : 29th July 2019.
